

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BENSLEY CONSTRUCTION, INC.,  
on its own behalf and on behalf  
of all others similarly situated,

Plaintiff,

Civil Action No. 05 11249 GAO

v.

MARSH & MCLENNAN  
COMPANIES, INC., et al.

Defendants.

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**AFFIDAVIT OF KENNETH G. GILMAN IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO THE LIBERTY DEFENDANTS' MOTIONS TO DISMISS**

Now comes Kenneth G. Gilman and after being duly sworn, deposes and says as follows:

1. I am one of the attorneys for the Plaintiff in the above-entitled action and have personal knowledge of the facts set forth herein. I am submitting this Affidavit in support of Plaintiff's Opposition to Motions to Dismiss of Defendants Liberty Mutual Group, Inc., Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, Employers Insurance Company of Wausau, and St. James Insurance Company, Ltd.

2. Attached hereto as Exhibit A is a true copy of a summons directed to St. James Insurance Company, Ltd., ("St. James") with the affidavit of a Massachusetts constable reflecting an attempt to serve the complaint upon St. James at 175 Berkeley Street, Boston, MA, on May 17, 2005 at 1:00 p.m.

3. Attached hereto as Exhibit B is a true copy of a summons directed St. James, with the affidavit of a Massachusetts constable reflecting an attempt to serve the complaint upon St.

James through its registered agent on May 17, 2005 at 12:14 p.m.

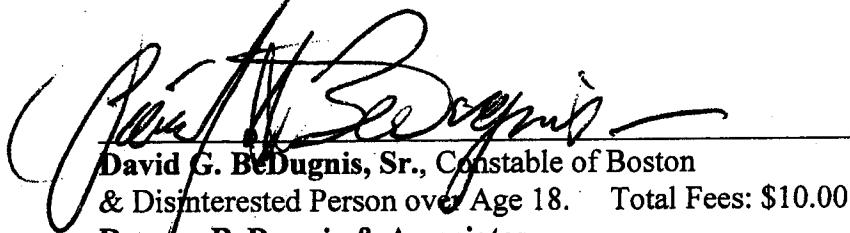
Signed under the pains and penalties of perjury this 27nd day of July, 2005.

/s/ Kenneth G. Gilman  
Kenneth G. Gilman

**Docket/Case No: 5 0277**

I hereby certify and return that today, May 17, 2005, at 1:00 PM, I completed making due and diligent search for the within named St. James Insurance Company, LTD, for their last and usual place of Business, Agent or Attorney at 175 Berkeley Street, Boston, MA . I have been unable to find either within my precinct. I therefore return this writ without service upon St. James Insurance Company, LTD.

Signed under the pains and penalties of perjury today, May 17, 2005.



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David G. BeDugnis, Sr., Constable of Boston  
& Disinterested Person over Age 18. Total Fees: \$10.00

**Roscoe, BeDugnis & Associates**  
15 Court Square, Suite 450  
Boston, MA, 02108-2519  
(617) 523-1036, (617) 723-4247 Fax

(TO PLAINTIFF'S ATTORNEY: Please Circle Type of Action Involved: -  TORT - MOTOR VEHICLE TORT -  
CONTRACT - EQUITABLE RELIEF -  OTHER.)

# COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

Bensley Construction, Inc., on its own behalf and on behalf of others similarly situated

**SUPERIOR COURT  
CIVIL ACTION  
No.**

5 0277

, Plaintiff(s)

Marsh & McLennan Companies, Inc., et al.

, Defendant(s)

## SUMMONS

Officer or Person in Charge of Business: SUMMONS

St. James Insurance Company LTD,

To the above named Defendant: *St. James Insurance Company LTD,*  
*175 Berkeley Street, Boston, MA 02117*

You are hereby summoned and required to serve upon Kenneth G. Gilman,

plaintiff's attorney, whose address is 60 State Street, 37th Flr., Boston, MA 02109, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at

— Lawrence either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Barbara J. Rouse

WITNESS, [REDACTED], Esquire, at Salem, the  
day of [REDACTED], in the year of our Lord two thousand [REDACTED]

Thomas H. Driscoll Jr.  
Clerk

## Clerk

## NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

**PROOF OF SERVICE OF PROCESS**

I hereby certify and return that on \_\_\_\_\_, 20\_\_\_\_\_, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (see Mass. R. Civ. P. 4 (d) (1-5):

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Dated: \_\_\_\_\_, 20\_\_\_\_\_

**N.B. TO PROCESS SERVER:-**

**PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.**

\_\_\_\_\_ , 20\_\_\_\_\_

COMMONWEALTH OF  
MASSACHUSETTS

SUPERIOR COURT  
CIVIL ACTION  
No. 05-0277

ESSEX, ss.

Bensley Construction, Inc.

Plaintiff(s)

v.

Marsh & McLennan Companies, et al.

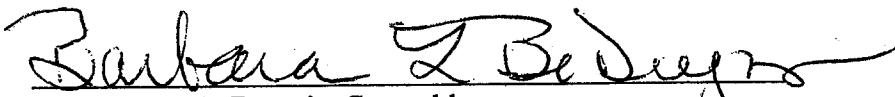
Defendant(s)

**SUMMONS**  
(Mass. R. Civ. P. 4)

**Docket/Case No: 5 0277**

I hereby certify and return that today, May 17, 2005, at 12:14 PM, I completed making due and diligent search for the within named St. James Insurance Company, LTD, for their last and usual place of Business, Agent or Attorney at c/o C.T. Corporation System, 101 Federal Street, Boston, MA . I have been unable to find either within my precinct. I therefore return this writ without service upon St. James Insurance Company, LTD.

Signed under the pains and penalties of perjury today, May 17, 2005.



**Barbara L. BeDugnis, Constable**

& Disinterested Person over Age 18. Total Fees: \$17.50

**Roscoe, BeDugnis & Associates**

15 Court Square, Suite 450

Boston , MA, 02108-2519

(617) 523-1036 , (617) 723-4247 Fax

(TO PLAINTIFF'S ATTORNEY: Please Circle Type of Action Involved:  TORT  CONTRACT  EQUITABLE RELIEF  OTHER.)

# COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No.

Bensley Construction, Inc., on its own behalf and on behalf of others similarly situated. 5 0277 Plaintiff(s)

v.

Marsh & McLennan Companies, Inc., et al.

Defendant(s)

## SUMMONS

To the above named Defendant: CT Corporation System, 101 Federal Street, Boston MA 02110, Resident Agent of St. James Insurance Company LTD.

You are hereby summoned and required to serve upon Kenneth G. Gilman,  
60 State Street, 37th Floor  
plaintiff's attorney, whose address is Boston, MA 02109, an answer to the  
complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the  
day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the  
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at  
100 Essex Street, Lawrence either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Barbara J. Rouse

WITNESS, Thomas H. Resick Jr., Esquire, at Salem, the  
day of

*Thomas H. Resick Jr.*  
Clerk

### NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

## **PROOF OF SERVICE OF PROCESS**

I hereby certify and return that on \_\_\_\_\_, 20\_\_\_\_\_, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (see Mass. R. Civ. P. 4 (d) (1-5):

Dated: , 20

**N.B. TO PROCESS SERVER:-**

TO PROCESS SERVER. PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

, 20

COMMONWEALTH OF  
MASSACHUSETTS

ESSEX, ss.  
SUPERIOR COURT  
CIVIL ACTION  
No. 05-0277

Bensley Construction, Inc.

Plaintiff(s)

Marsh & McLennan Companies, et al. v.

**Defendant(s)**

**SUMMONS**  
(Mass. R. Civ. P. 4)